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NOTE

from: Council Secretariat
to: Working Party on Consumer Protection and Information

No. Cion prop.: 17795/11 CONSOM 196 MI 616 JUSTCIV 339 CODEC 2242 and
17815/11 CONSOM 197 MI 617 JUSTCIV 340 CODEC 2243

No. prev. doc.: 9698/12 CONSOM 69 MI 318 JUSTCIV 174 CODEC 1247

Subject: Proposal for a Directive of the European Parliament and of the Council on
alternative dispute resolution for consumer disputes and amending Regulation
(EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)
and
Proposal for a Regulation of the European Parliament and of the Council on
online dispute resolution for consumer disputes (Regulation on consumer ODR)
- *General Approach*

Delegations will find attached the text of the general approach as agreed at the Competitiveness
Council on 30 May 2012.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission¹,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee²,
After consulting the European Data Protection Supervisor,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) Article 169(1) and Article 169(2)(a) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall ensure a high level of consumer protection.
- (2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from the internal market, it is necessary that they have access to simple and low-cost ways of resolving disputes which arise from the sale of goods or the provision of services. This applies to offline as well as to online transactions, and is particularly important when consumers shop across borders.

¹ OJ C ..., ..., p....

² OJ C ..., ..., p....

- (3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently developed across the Union. ADR procedures are currently not available in all territorial areas or business sectors in the Union. Where ADR procedures are available, their quality levels vary considerably in the Member States, consumers' and traders' awareness of them is often low and cross-border disputes are often not handled effectively by ADR entities.
- (4) In its Single Market Act³, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.
- (4a) The disparities in ADR coverage, quality and awareness in Member States constitute a barrier to the Single Market and are among the reasons why many consumers abstain from shopping across border and lack confidence that potential disputes with traders could be resolved in an easy, fast and inexpensive way. For the same reasons, traders may abstain from selling to consumers in other Member States where there is no sufficient access to quality ADR procedures. Furthermore, traders established in a Member State where quality ADR procedures are not sufficiently available are put at a competitive disadvantage with regard to traders that have access to such procedures and can thus resolve consumer disputes faster and cheaper.
- (5) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.⁴
- (5a) To improve the functioning of the Single Market, it is necessary that alternative dispute resolution is available for all types of consumer disputes, domestic and cross border, covered by this Directive, quality levels of ADR procedures are even, and consumers and traders are aware of such procedures. It is also necessary that ADR entities handle cross-border disputes effectively.

³ Communication from the Commission to the European Parliament, the Council, the economic and social Committee and the Committee of the Regions: Single Market Act – Twelve levers to boost growth and strengthen confidence, "Working together to create new growth", COM (2011) 206 final, p. 9.

⁴ Conclusions of the European Council of 24-25 March 2011, EUCO 10/11, p. 4; see also Conclusions of the European Council of 23 October 2011, EUCO 52/11, pp. 1-2.

- (5b) This Directive does not apply to non economic services of general interest. “Non economic services” are services which are not performed for an economic consideration. As a result, non-economic services of general interest performed by the State or on behalf of the State, without remuneration, in the context of its duties in the educational, social or other field, for instance courses provided under the national education system or social services, in the areas such as social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care, are not covered by this Directive. Furthermore, the Directive does not apply to health care services as defined in Article 3(a) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients’ rights in cross-border healthcare⁵.
- (6) The development within the European Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce. Such development should build on existing ADR procedures in the Member States and respect their legal traditions.
- (7) This Directive should apply to disputes between consumers and traders concerning contractual obligations stemming from the sales or services contracts in all economic sectors covered by this Directive. This should include disputes arising from the sale or provision of digital content for remuneration. This Directive should apply to complaints submitted by consumers against traders. It should not apply to complaints submitted by traders against consumers or to disputes between traders; however, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.
- (7a) Member States may maintain or introduce national provisions with regard to procedures not covered by this Directive, such as internal complaint handling procedures operated by the trader. Such internal complaint handling procedures can constitute an effective means for resolving consumer disputes at an early stage. Where this is not foreseen in the rules of procedure of ADR entities, consumers should be encouraged to seek an amicable solution of the dispute directly with the trader before they submit disputes to an ADR entity.

⁵ OJ L 88 , 4.4.2011, p. 45

- (8) The definition of “consumer” should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person’s trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.
- (9) This Directive should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters⁶, Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁷ and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”)⁸.
- (10) This Directive should prevail over sector specific Union legislation relating to alternative dispute resolution. In order to facilitate the implementation of this Directive, the Commission is invited to prepare guidelines in close cooperation with Member States on the relationship between this Directive and other Union legislation.
- (11) ADR entities are highly diverse across the Union but also within the Member States. This Directive should cover any entity that is established on a durable basis to solve a dispute between a consumer and a trader through an ADR procedure that has been listed in accordance with Article 17(2) of this Directive. This Directive may also cover, if Member States choose to do so, dispute resolution entities which impose a binding solution for the parties. However, an extra-judicial procedure which is created on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.

⁶ OJ L 136, 24.5.2008, p. 3.

⁷ OJ L 12, 16.1.2001, p. 32.

⁸ OJ L 177, 4.7.2008, p. 6.

- (12) This Directive should not apply to procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader nor to procedures before consumer compliant handling systems operated by the trader. It should not apply to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.
- (12a) The independence of ADR entities and of the natural persons in charge of dispute resolution is an important requirement for consumers having confidence in ADR. Consequently, procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the trader are likely to be prejudged by a conflict of interest and should, in principle, not be regarded as ADR procedures under this Directive and hence be excluded from its scope of application. However, such procedures may also be covered by this Directive in a given Member State if the independence of the dispute resolution entity and the natural persons in charge of dispute resolution is ensured by additional safeguards and if that Member State decides that such procedures could qualify as ADR procedures under this Directive.

- (13) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity fulfilling the requirements set out in this Directive and which is notified to the Commission. Member States should have the possibility to fulfil this obligation by relying on existing ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. This Directive should not preclude the functioning of existing ADR entities operating in the framework of national consumer protection authorities of Member States where the State officials are in charge of dispute resolution. State officials should be regarded as impartial representatives of both consumers' and traders' interests. This Directive should not affect the possibility for businesses or for business or professional organisations to fund ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. Member States should have the possibility to provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific entity is competent. The role of a residual ADR entity is to make sure that all disputes can be handled, in particular those that are not covered by any other ADR entity notified in accordance with this Directive. Residual ADR entities are intended to be a safeguard for consumers and traders by ensuring that there are no gaps in the access to an ADR entity.

- (13a) This Directive should not prevent Member States from introducing or maintaining legislation on procedures for out-of-court resolution of consumer contractual disputes. Furthermore, in order to ensure that ADR entities can operate effectively they should have the possibility to maintain or introduce, in accordance with the laws of the Member State in which they are established, procedural rules allowing them to refuse to deal with disputes in specific circumstances. They should therefore have the possibility to dismiss a complaint if the consumer has failed to make direct contact with the trader with a view to settling the dispute before it is brought before the ADR entity. They should also have the possibility to refuse to deal with a dispute when the dispute is frivolous or vexatious, when the dispute has previously been considered by another ADR entity or by a court or when dealing with the dispute would otherwise seriously impair the effective operation of the ADR entity. This can be the case if the value of the dispute is below or above a certain threshold, if a dispute is not submitted to an ADR entity within one year from the date when the consumer has submitted a complaint or if a dispute is too complex and would therefore be better resolved in court. However, it should be excluded that procedural rules allowing ADR entities to refuse to deal with a dispute significantly impair consumers' access to ADR procedures, including in the case of cross-border disputes. Thus, when providing for a monetary threshold, Member States should always take into account that the real value of a dispute may vary among Member States and consequently, setting a disproportionately high threshold in a Member State should in reality impair access to ADR procedures for consumers from other Member States. Member States should not be required to ensure that the consumer can submit his complaint to another ADR entity, where an ADR entity has dismissed a complaint because of procedural rules described in Article 5(4) and (5). In such cases it should be deemed that Member States have fulfilled their obligation as referred to in Article 5(1) of this Directive.
- (14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. Member States should encourage the development of such entities.
- (15) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. Such procedures can be seen as a preliminary step to further developing collective ADR procedures within the Union.

- (16) The processing of information relating to disputes covered by this Directive should comply with the rules on the protection of personal data laid down in the laws, regulations and administrative provisions of the Member States adopted pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- (17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member.
- (17a) The applicability of certain quality principles to ADR procedures strengthens both consumers' and traders' confidence in such procedures. Such quality principles were first developed at Union level in the Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes⁹ and in the Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes¹⁰. By giving a binding nature to the principles established in those Commission Recommendations, this Directive establishes a set of minimum quality standards which apply to all ADR procedures carried out by an ADR entity which has been notified to the Commission. Member States may maintain or introduce national provisions in addition to those established by this Directive, in conformity with Union legislation.
- (18) In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive all the information they need to take an informed decision engaging in an ADR procedure.
- (19) ADR procedures should be effective. They should provide for a simple and fast procedure whose duration generally does not exceed 90 days. The ADR entity should be able to extend this time period when the complexity of the dispute in question so demands or because of other justified grounds.

⁹ OJ L 115, 17.4.1998, p. 31.

¹⁰ OJ L 109, 19.4.2001, p. 51.

- (20) ADR should be free of charge or of moderate costs for consumers so that it remains economically reasonable for consumers to use such procedures.
- (21) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure.
- (21a) An agreement between a consumer and a trader to submit complaints to an ADR entity should not be binding on the consumer if it was concluded before the dispute arose and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute. Furthermore, in ADR procedures which aim at resolving the dispute by imposing a solution, it should only be possible to make the solution binding on the parties if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader is not required if national rules provide that solutions are binding on traders.
- (21b) ADR procedures which aim at resolving the dispute by imposing a solution should afford to consumers at least the same level of protection as the one foreseen by the mandatory provisions of the law of the Member State in whose territory the ADR entity is established. Solutions imposed by ADR entities applying such ADR procedures should therefore not result in the consumer being deprived of the protection afforded by such mandatory provisions. In the case of cross border disputes, in the instances where such protection is provided for in Article 6 of Regulation (EC) No 593/2008 or Article 5(2) of Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980¹¹, the solutions imposed should not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which the consumer is habitually resident.

¹¹ OJ L 266, 9.10.1980, p. 1.

- (21c) Where a dispute could not be resolved successfully by a given ADR procedure, it is desirable that Member States provide that the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States may foresee for example a provision which avoids the expiry of limitation or prescription periods during the ADR procedure as it is provided for in Directive 2008/52/EC.
- (22) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint. Therefore traders, who commits to use ADR entities to resolve disputes with consumers, must inform consumers about the ADR entity or ADR entities by which they are covered. The information shall include the address of the relevant ADR entity or ADR entities' website. The information shall be mentioned in a clear, comprehensible and easily accessible way on the traders' websites, where one exists, and, if applicable, in the general terms and conditions applying to contracts, for the sale of goods or the provision of services between themselves and a consumer, where one exists. Traders should have the possibility to include on their websites, and in the terms and conditions of the relevant contracts any additional information on their internal complaint handling procedures or on any other ways of directly contacting them with a view to settling disputes with consumers without referring them to an ADR entity.
- (22a) The obligation to inform consumers about the ADR entities by which they are covered should be without prejudice to the information obligation established by Articles 6(1)(t), 7(1) and 8(1) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights¹².
- (23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, this directive is without prejudice to any national rules making the participation of traders in such procedures mandatory or their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as guaranteed in Article 47 of Charter of Fundamental Rights of European Union.

¹² OJ L 304, 22.11.2011, p. 64

- (24) Member States should encourage that ADR entities cooperate on the resolution of cross-border disputes.
- (25) Networks of ADR entities which facilitate the resolution of cross-border disputes, such as FIN-NET in the area of financial services, should be strengthened within the Union. Member States should encourage ADR entities to become part of such networks.
- (26) Close cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation. This cooperation should include both the exchange of general information about practices in specific business sectors about which consumers have lodged complaints and the provision by such national authorities of technical assessment or information in individual disputes. The provision of technical assessment or information is important in cases where such technical assessment or information is necessary for an ADR entity to be able to deal with a dispute submitted to it and the technical assessment or information cannot be obtained elsewhere. This is the case with regard to disputes concerning consumer rights under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights¹³ and Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air¹⁴. However, national authorities should not be required to provide information or technical assessment in as much as they are prevented from doing so by virtue of rules on professional secrecy applying to them.

¹³ OJ L 46, 17.2.2004, p. 1

¹⁴ OJ L 204, 26.7.2006, p. 1

- (27) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. Member States should ensure that ADR entities, the European Consumer Centre Network and, where appropriate, the bodies designated in accordance with Article 11(2) publish this list. Furthermore, Member States should encourage that relevant consumer associations and business associations also publish this list. Member States should also ensure appropriate dissemination of information on how consumers may get access to ADR procedures if they have a contractual dispute with a trader as referred to in Article 2. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries¹⁵.
- (28) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive relating to consumer information by traders and ensure that they are enforced. The penalties should be effective, proportionate and dissuasive.
- (29) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)¹⁶ should be amended to include a reference to this Directive in its Annex so as to reinforce cross-border cooperation on enforcement of this Directive.
- (30) Directive 2009/22 of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Injunctions Directive)¹⁷ should be amended to include a reference to this Directive in its Annex so as to ensure that the consumers' collective interests laid down in this Directive are protected.

¹⁵ OJ L 136, 2.6.2010, p.1.

¹⁶ OJ L 364, 9.12.2004, p. 1.

¹⁷ OJ L 110, 1.5.2009, p. 30.

- (30a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (31) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market by ensuring a high level of consumer protection, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (32) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that disputes can be submitted by consumers against traders to entities offering impartial, transparent, effective and fair alternative dispute resolution procedures.

Article 2

Scope

1. This Directive shall apply to procedures for the out-of-court resolution of disputes concerning contractual obligations stemming from sales contracts or services contracts between a trader established in the Union and a consumer resident in the Union through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.

2. This Directive shall not apply to:

- (a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader unless Member States decide to allow such procedures and the following conditions are met:
- the natural persons in charge of the dispute resolution is nominated by, or form part of, a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader;
 - the natural persons in charge of the dispute resolution is granted a period of office of a minimum of three years to ensure the independence of their actions;
 - the natural persons in charge of the dispute resolution have not worked for the trader, a professional organisation or business association or a member of that professional organisation or business association during three years prior to assuming the post and three years after holding the post as the persons in charge of dispute resolution
 - the dispute resolution entity is subject to at least an annual evaluation pertaining to their compliance with the requirements set out in Articles 5 to 9 carried out by the competent authority in the Member State where the entity is established;
 - the dispute resolution entity does not have any hierarchical or functional link with the trader and is clearly separated from the trader's operational entities and disposes of a sufficient budget to fulfill its tasks which is separate from the trader's general budget; and
 - the natural persons in charge of the dispute resolution cannot be subject to instructions from the trader or the trader's representative.

- (b) procedures before consumer complaint handling systems operated by the trader;
- (c) direct negotiation between the consumer and the trader;
- (d) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- (e) procedures submitted by the trader against a consumer;
- (f) health services provided by health professionals, to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices;
- (g) all providers of further or higher education that offer courses which are wholly or partially government funded.

Article 3

Relationship with other Union legislation

1. This Directive is without prejudice to Directive 2008/52/EC, Regulation (EC) No 44/2001 and Regulation (EC) No 593/2008.
2. [...]
3. This Directive shall prevail over provisions contained in sector-specific Union legislation which relate to alternative dispute resolution initiated by a consumer against a trader only to the extent that such provisions do not ensure at least an equivalent degree of consumer protection.

Article 4

Definitions

For the purposes of this Directive:

- (a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

- (b) "trader" means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;
- (c) a trader is established:
- if the trader is a natural person, where he has his place of business;
 - if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment;
- (d) "cross-border dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;
- (da) "ADR procedure" means a procedure as referred to in Article 2 which complies with the requirements set out in this Directive and is carried out by an ADR entity;
- (e) "ADR entity" means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that has been listed in accordance with Article 17(2);
- (f) an ADR entity is established:
- if the entity is operated by a natural person, at the place where it carries out alternative dispute resolution activities;
 - if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities;
 - if the entity is operated by an authority or other public body, where that authority or other public body has its seat;

- (g) "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;
- (h) "service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof.

CHAPTER II

ACCESS AND PRINCIPLES APPLICABLE TO ALTERNATIVE DISPUTE RESOLUTION

Article 5

Access to alternative dispute resolution

1. Member States shall ensure that disputes covered by this Directive and involving a trader established on its territory can be submitted to an ADR entity which complies with the requirements set out in this Directive.

2. Member States shall ensure that ADR entities:
 - (a) have a website enabling the parties to submit a complaint online;
 - (b) enable the parties to exchange information with them via electronic means;
 - (c) accept both, domestic and cross-border disputes, including disputes covered by Regulation (EU) No [Office of Publications insert reference number] of the European Parliament and of the Council of [Office of Publications insert date of adoption] on online dispute resolution for consumer disputes (Regulation on consumer ODR)¹⁸; and

when dealing with disputes covered by this Directive take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC in which the ADR entity is established.

¹⁸ OJ L ..., .., p. ...

3. Member States may fulfil their obligation under paragraph 1 by ensuring the existence of a residual ADR entity which is competent to deal with disputes as referred to in paragraph 1 for the resolution of which no existing ADR entity is competent.

4. Member States may allow ADR entities to introduce or maintain procedural rules allowing them to refuse to deal with a given dispute on the grounds that the consumer has failed to make a direct contact with the trader with a view to settling the dispute before it is brought before the ADR entity, that the complaint is frivolous or vexatious, that the dispute has previously been considered by another ADR entity or by a court or that dealing with such a dispute would otherwise seriously impair the effective operation of the ADR entity. Such procedural rules must not significantly impair consumers' access to ADR procedures, including in the case of cross-border disputes.

5. In order to reconcile the need to ensure consumers' access to ADR procedures with the need to avoid disproportionate administrative burdens being placed on ADR entities, Member States may set out monetary thresholds by which this Directive does not apply. The thresholds must not be set at a level, where they significantly impair the consumer's access to complaint handling by ADR entities.

In the case of time limits within which a consumer can submit a complaint to an ADR entity, such time limit must not be set at less than one year from the date when the consumer has submitted a complaint to the trader.

6. Where, in accordance with the procedural rules referred to in paragraphs 4 and 5, an ADR entity is unable to consider a complaint that has been submitted to it, Member States shall not be required to ensure that the consumer can submit his complaint to another ADR entity.

- 6a. Where an ADR entity dealing with disputes in a specific economic sector is competent to consider disputes related to a trader operating in the sector which is not member of the organisation or association forming or funding the ADR entity, it shall be deemed that the Member State has fulfilled its obligation according to paragraph 1 also with respect to disputes concerning this trader.
7. Where, in accordance with procedural rules as referred to in paragraph 4, an ADR entity is unable to consider a complaint that has been submitted to it, that ADR entity shall provide both parties with a reasoned explanation on the grounds for not considering the dispute.

Article 6

Expertise, impartiality and independence

1. Member States shall ensure that the natural persons in charge of alternative dispute resolution possess the necessary expertise, impartiality and are independent. This shall be guaranteed by ensuring that they:
- (a) possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer dispute resolution;
 - (b) are not liable to be relieved from their duties without just cause;
 - (c) have no conflict of interest with either party to the dispute.
2. Member States shall ensure that ADR entities where the natural persons in charge of dispute resolution form part of a collegial body provide for an equal number of representatives of consumers' interests and of representatives of traders' interests in that body.

Article 7
Transparency

1. Member States shall ensure that ADR entities make publicly available on their websites and by any other means they consider appropriate information on:
 - (-a) contact details including postal address and e-mail address;
 - (a) the natural persons in charge of alternative dispute resolution, the method of their appointment and the length of their mandate;
 - (aa) the fact that they are ADR entities notified by the national competent authority on the basis of this Directive;
 - (b) [...]
 - (ba) their expertise, impartiality and independence in case the natural persons in charge of alternative dispute resolution is employed or remunerated exclusively by the trader;
 - (c) where appropriate, their membership in networks of ADR entities facilitating cross-border dispute resolution;
 - (d) the types of disputes they are competent to deal with;
 - (e) the rules of procedure governing the resolution of a dispute and the grounds the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and (5);
 - (f) the languages in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
 - (g) the types of rules the ADR entity may use as a basis for the dispute resolution (e.g. rules of law, considerations of equity, codes of conduct);

- (h) any preliminary requirements the parties may have to meet before an ADR procedure can be instituted;
- (i) the costs, if any, to be borne by the parties;
- (j) the average length of the ADR procedure;
- (k) the legal effect of the outcome of the ADR procedure.

2. Member States shall ensure that ADR entities make publicly available on their websites and by any other means they consider appropriate annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

- (a) the number of disputes received and the types of complaints to which they related;
- (b) any recurrent problems leading to disputes between consumers and traders;
- (ba) the rate of disputes the ADR entity has refused to deal with and the percentage share of the types of grounds for such refusal as referred to in Article 5(4) and 5(5);
- (bb) in the case of procedures described in Article 2(2)(a) the rate of solutions being proposed or imposed in favour of the consumer in favour of the trader or resolved by an amicable solution;
- (c) the rate of dispute resolution procedures which were discontinued before an outcome was reached;
- (d) the average time taken to resolve disputes;
- (e) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (f) where appropriate, their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes.

Article 8
Effectiveness

Member States shall ensure that ADR procedures are effective by fulfilling the following requirements:

- (a) the ADR procedure is easily accessible to both parties irrespective of where the party is situated, including by electronic means as provided for in Article 5(2)(a) and (b);
- (b) the parties have access to the procedure without being obliged to use a legal representative; nonetheless parties may be represented or assisted by a third party at any stage of the procedure;
- (c) the ADR procedure is free of charge or at moderate costs for consumers;
- (d) the outcome of the ADR procedure is made available within 90 days from the date on which the ADR entity has received the complaint and all relevant documentation pertaining to that complaint. In the case of complex disputes or for other justified grounds, this time period may be exceeded.

Article 9
Fairness

1. Member States shall ensure that in ADR procedures, which aim at resolving the dispute by proposing or imposing a solution:
 - (a) the parties have the possibility within a reasonable period of time to express their point of view and receive and be able to comment on the arguments and facts put forward by the other party and any experts' statements;

- (aa) the parties are informed that they are not obliged to use a legal representative, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;
- (b) the outcome of the ADR procedure is made available to both parties in writing or on a durable medium, stating the grounds on which the outcome is based.

2. In addition to paragraph 1, Member States shall ensure that in ADR procedures which aim at resolving the dispute by proposing a solution

- (a) the parties, before agreeing to or following a proposed solution, are informed that:
 - (i) they have the choice as to whether or not to agree to or follow the proposed solution;
 - (ii) where applicable the proposed solution may be less favourable than an outcome determined by a court applying legal rules;
- (b) the parties, before agreeing to or following a proposed solution, are informed of the legal effect of agreeing to or following such a proposed solution;
- (c) where the parties have to express their consent to a proposed solution or amicable agreement, they are allowed a reasonable period of time to reflect.

Article 9a

Liberty

1. Member States shall ensure that an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

2. Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader is not required if national rules provide that solutions are binding on traders.

Article 9b

Legality

Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution the solution imposed may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the Member State in whose territory the ADR entity is established. In the case of cross-border disputes, the solution imposed by the ADR entity may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is habitually resident in the instances where such protection is provided for in Article 6 of Regulation (EC) No 593/2008 or Article 5(2) of Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980¹⁹.

¹⁹ OJ L 266, 9.10.1980, p. 1.

Article 9c
Guidelines

1. The Commission shall draw up guidelines for the implementation of this Directive. The guidelines shall in particular focus on the principles set out in Articles 6 to 9a, the cooperation between ADR entities in cross-border cases and between ADR entities and national authorities as set out in Articles 13 to 14, and the relationship between this Directive and other Union legislation. To this end, the Commission shall draw on the established practice in Member States, voluntary codes of conduct and any other relevant data.

2. The Commission shall transmit the guidelines to the Member States and make it publicly available.

CHAPTER III

INFORMATION AND COOPERATION

Article 10

Consumer information by traders

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entity or ADR entities by which they are covered, when the trader commits to or is obliged to use these entities to resolve disputes with consumers. The information shall include the address of the relevant ADR entity or ADR entities' website.
2. The information referred to in paragraph 1 shall be mentioned in a clear, comprehensible and easily accessible way on the traders' website, where one exists and if applicable in the general terms and conditions of sales or service contracts between the trader and a consumer.
3. The provisions in this Article shall be without prejudice to the provisions in Articles 6(1)(t), 7(1) and 8(1) of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

Article 11
Assistance for consumers

1. Member States shall ensure that with regard to disputes arising from cross-border sales or service contracts, consumers can obtain assistance to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.
2. Member States may confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, on consumer associations or on any other body.

Article 12
General information

1. Member States shall ensure that ADR entities, the centres of the European Consumer Centre Network and, where appropriate, the bodies designated in accordance with Article 11(2), make publicly available on their websites by providing a link to the Commission's website and by any other means they consider appropriate, the list of ADR entities referred to in Article 17(4).
2. Member States shall encourage that relevant consumer associations and business associations make publicly available on their websites and, by any other means they consider appropriate the list of ADR entities referred to in Article 17(4).
3. The Commission and Member States shall ensure appropriate dissemination of information on how consumers may get access to ADR procedures if they have a contractual dispute with a trader as referred to in Article 2.

Article 13

Cooperation between ADR entities on the resolution of cross-border disputes

1. Member States shall encourage that ADR entities cooperate on the resolution of cross-border disputes.
2. Where a network of ADR entities facilitating the resolution of cross-border disputes exists in a sector-specific area within the Union, Member States shall encourage ADR entities that deal with disputes in that area to become a member of that network.
3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 2. The Commission shall, if necessary, update this list every two years.

Article 14

Cooperation between ADR entities and national authorities enforcing Union legislation on consumer protection

1. Member States shall encourage cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection.
2. This cooperation may include mutual exchange of information on practices in specific business sectors about which consumers have lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes.
3. Member States shall ensure that cooperation and mutual information exchanges referred to in paragraphs 1 and 2 comply with the rules on the protection of personal data laid down in Directive 95/46/EC.

4. The provisions in this Article shall be without prejudice to provisions on professional secrecy which apply to national authorities enforcing Union legislation on consumer protection. ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member States where they are established.

CHAPTER IV

THE ROLE OF COMPETENT AUTHORITIES AND THE COMMISSION

Article 15

Designation of competent authorities

1. Each Member State shall designate an authority as competent authority in terms of Articles 16 and 17. Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which of the competent authorities designated is the single point of contact for the Commission among the competent authorities established on its territory. The single point of contact, and the competent authority where the Member State has only designated one, shall be a public authority inter alia as defined in Regulation 2006/2004. Each Member State shall communicate the authority or, where appropriate, the competent authorities including the single point of contact it has designated to the Commission.
2. The Commission shall establish a list of the competent authorities including, where appropriate, the single point of contact communicated to it in accordance with paragraph 1 and publish that list in the *Official Journal of the European Union*.

Article 16

Information to be notified to competent authorities by ADR entities

1. Member States shall ensure that entities established on their territories, with the intention to be notified in accordance with this Directive, notify to the competent authority the following:
 - (a) their name, contact details and website address;
 - (b) information on their structure and funding, including information on the natural persons in charge of alternative dispute resolution, their funding and by whom they are employed;
 - (ba) a statement on the types of disputes covered by the ADR procedure;
 - (c) their rules of procedure;
 - (d) their fees, if applicable;
 - (e) the average length of the ADR procedures;
 - (f) the language or languages in which complaints can be submitted and the ADR procedure conducted;
 - (fa) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and 5(5);
 - (g) [...];
 - (h) a reasoned statement on whether the entity qualifies as an ADR entity falling within the scope of this Directive and complies with the requirements set out in chapter II.

In the event of changes to the information referred to in points (a) to (fa), ADR entities shall without undue delay notify these changes to the competent authority.

2. Member States shall ensure that ADR entities communicate to the competent authorities at least every two years the following information:
- (a) the number of disputes received and the types of complaints to which they related;
 - (b) the rate of ADR procedures which were discontinued before an outcome was reached;
 - (c) the average time taken to resolve the disputes received;
 - (d) the rate of compliance, if known, with the outcomes of the ADR procedures;
 - (e) relevant statistics demonstrating the way in which traders use alternative dispute resolution for their disputes with consumers;
 - (f) any recurrent problems leading to disputes between consumers and traders;
 - (g) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
 - (h) an assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

Article 17

Role of the competent authorities and of the Commission

1. Each competent authority shall assess, in particular on the basis of the information it has received in accordance with Article 16(1), whether the entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the requirements set out in chapter II.
2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of the ADR entities that fulfil the conditions set out in paragraph 1.

The list shall include the following:

- (a) the name, the contact details and the website addresses of these ADR entities;
- (b) their fees, if applicable;
- (c) the language or languages in which in which complaints can be submitted and the ADR procedure conducted;
- (d) the types of disputes covered by the ADR procedure;
- (e) the need for the physical presence of the parties or of their representatives, if applicable, including a statement on whether the ADR procedure is or can be conducted as an oral or a written procedure; and
- (f) the binding or non-binding nature of the outcome of the procedure;
- (g) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and 5(5).

Each competent authority shall notify the list to the Commission. In the event that any changes are notified to the competent authority in accordance with the second subparagraph of Article 16(1), the list shall be updated without undue delay and the relevant information notified to the Commission.

Competent authorities shall notify an ADR entity if that ADR entity no longer fulfills the requirements set out in paragraph 1. If the ADR entity after a period of three months still does not fulfill the requirements set out in paragraph 1, the competent authority shall remove the ADR entity from the list.

The list shall be updated without undue delay and the relevant information notified to the Commission.

3. If a Member State has designated more than one competent authority, the list and the updates referred to in paragraph 2 shall be notified to the Commission by the single point of contact. The list and the updates shall relate to all ADR entities established in that Member State.
4. The Commission shall establish a list of the ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance with the second sentence of the third subparagraph of paragraph 2 or with the fourth subparagraph of paragraph 2. The Commission shall publish this list and its updates on its website and by any other means it considers appropriate. The Commission shall transmit the list and its updates to the competent authorities and the Member States.
5. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 4 on its website by providing a link to the relevant Commission website. In addition, each competent authority may publish the consolidated list by any other means it considers appropriate.

6. No later than ...^{*} and every four years thereafter, each competent authority shall publish a report on the development and functioning of ADR entities. The report shall in particular:
- (a) [...];
 - (b) identify best practices of ADR entities;
 - (c) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes, where appropriate;
 - (d) make recommendations on how to improve the functioning of ADR entities, where appropriate.

If a Member State has designated more than one competent authority, the report shall be published by the single point of contact. The report shall relate to all ADR entities established in that Member State.

^{*} OJ please insert date: three years after the end of the transposition period as set out in Article 22(1),

CHAPTER V FINAL PROVISIONS

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Article 10 of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

"20. Directive of the European Parliament and of the Council of on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L...,, p. ...): Article 10."

Article 20

Amendment to Directive 2009/22/EC

In the Annex to Directive 2009/22/EC the following point is added:

"14. Directive of the European Parliament and of the Council of on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L...,, p. ...): Article 10."

Article 21
Communication

1. By [Office of Publications insert same date as in Article 22(1) = date of implementation of the Directive] at the latest Member States shall communicate to the Commission
 - (a) where appropriate, the names and contact details of the bodies designated in accordance with Article 11(2); and
 - (b) the competent authorities designated in accordance with Article 15(1).Member States shall inform the Commission of any subsequent changes to this information.
2. By [*Office of Publications insert date: [six months] after the implementation date as to be inserted in Article 22(1)*] at the latest, Member States shall communicate to the Commission the first list referred to in Article 17(2).
3. The Commission shall transmit to the Member States the information referred to in paragraph 1(a).

Article 22
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to *comply* with this Directive by [*Office of Publications insert date: [24 months] after entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 23

Report

No later than [*Office of Publications insert date: four years after the end of the transposition period as set out in Article 22(1)*], and every four years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. The report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders. It shall in particular include an evaluation of the provisions regarding the scope of this Directive and examine whether there is a need for extending it to disputes submitted by traders against consumers. The report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

Article 24

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 25

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on online dispute resolution for consumer disputes (Regulation on consumer ODR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²⁰,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall ensure a high level of consumer protection.
- (2) In accordance with Article 26(2) TFEU, the Internal Market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from the digital dimension of the Internal Market, it is necessary that they have access to easy and low-cost ways of resolving disputes which arise from the sale of goods or the supply of services online. This is particularly important when consumers shop cross-border.

²⁰ OJ C.... ,.... , p.

- (3) In its Single Market Act²¹, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.
- (4) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.²²
- (5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy and make payments. Consumers are key players in the Internal Market and should therefore be at its heart. The digital dimension of the Internal Market is becoming vital for both consumers and traders. Consumers increasingly make purchases over the internet and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions in a digital environment.
- (6) Being able to seek easy and low-cost dispute resolution can boost consumers' and traders' confidence in the digital market. Consumers and traders, however, still face barriers to finding out-of-court solutions in particular to their disputes arising from a cross-border online transaction. Thus, such disputes currently are often left unresolved.
- (7) Online dispute resolution offers a simple and low-cost out-of-court solution to disputes arising from cross-border online transactions. However, there is currently a lack of mechanisms that allow consumers and traders to resolve such disputes via electronic means. This leads to consumer detriment, acts as a barrier to cross-border online transactions, creates an uneven playing field for traders and thus hampers the development of electronic commerce.

²¹ Commission Communication "Single Market Act" COM (2011) 206, p.9.

²² Conclusions of the European Council of 24-25 March 2011, EUCO 10/11, p. 4; see also Conclusions of the European Council of 23 October 2011, EUCO 52/11, pp. 1-2.

- (8) This Regulation should apply to the out-of-court resolution of disputes concerning contractual obligations between consumers resident in the Union and traders established in the Union stemming from cross-border online sales contracts or service contracts, which are covered by Directive.../.... EU [Office of Publications please insert number of Directive of the European Parliament and the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)]²³. This should include disputes arising from the sale or provision of digital content for remuneration. It should not apply to disputes between consumers and traders that arise from online sales contracts or services contracts if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services or the trader and the consumer are established or resident in the same Member State.
- (9) This Regulation should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters²⁴, Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²⁵ and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”)²⁶.
- (10) The definition of "consumer" should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person’s trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.

²³ OJ L ..., p. ...

²⁴ OJ L 136, 24.5.2008, p. 3.

²⁵ OJ L 12, 16.1.2001, p. 32.

²⁶ OJ L 177, 4.7.2008, p. 6.

- (11) The definition of "online sales or service contract" should cover a sales or service contract where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means and the consumer has ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone.
- (12) This Regulation should not apply to disputes between consumers and traders that arise from the cross-border sales contracts or services contracts offline. This Regulation should not apply to disputes between traders or to complaints submitted by traders against consumers.
- (13) This Regulation should be seen in conjunction with Directive .../.../EU [*Office of Publications insert reference number*] of the European Parliament and of the Council of [*Office of Publications insert date of adoption*] on alternative dispute resolution for consumer disputes (Directive on consumer ADR)²⁷ which requires Member States to ensure that all disputes between consumers and traders resident or established in the Union which arise from the sale of goods or provisions of services can be submitted to an alternative dispute resolution entity.

²⁷ OJ L ..., ..., p.

- (14) This Regulation aims at creating an online dispute resolution ('ODR') platform at European level. The ODR platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from a cross-border e-commerce transaction. It should allow consumers to submit complaints by filling in an electronic complaint form available in all official languages of the Union and transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The Commission should provide the technical facilities for the functioning of the platform, including for translation functions. The Commission should also on the ODR platform give information to the consumers about the possibility of requesting general assistance from the ODR facilitators. The platform should offer to ADR entities and the parties the possibility of conducting the dispute resolution procedure via the platform. The platform should also offer, free of charge, an electronic case management tool which enables the parties and the ADR entity to conduct the dispute resolution procedure online via the platform. ADR entities will be able to use this for their procedures. The tool will allow parties and ADR entities to upload relevant statements and evidence. The tool will, in accordance with the ADR procedure applied by the relevant ADR entity, automatically set deadlines to parties e.g. for making submissions. The tool will provide for a restricted access website on the ODR platform, which can be accessed by the parties, the ADR entity and if necessary by the ODR facilitators. Consumers should be encouraged to contact the trader and thus directly seek an amicable solution of the dispute before they submit a complaint to the ODR platform.
- (15) An ODR system at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the ODR platform should therefore apply their own rules of procedure, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. This should include rules ensuring that such dispute resolution does not require the physical presence of the parties or their representatives before the ADR entity. However, the parties may decide that physical presence is necessary.

- (16) Ensuring that all ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [= Directive on consumer ADR] *Office of Publications insert reference number*] are linked electronically to the European ODR platform should allow the full coverage in out-of-court redress online for cross-border disputes arising from the online sales contracts or services contracts.
- (17) This Regulation does not prevent the functioning of any existing online dispute resolution entity operating within the Union. It should not prevent ADR entities from dealing with cross-border online disputes which have been submitted to them by a means other than the ODR platform.
- (18) A network of online dispute resolution facilitators should provide support to the resolution of disputes relating to complaints submitted via the ODR platform. That network should be composed of contact points for ODR in the Member States which host online dispute resolution facilitators. Upon request the ODR facilitators should provide support to the parties involved in disputes relating to complaints submitted via the platform. The aim of the facilitators support is to assist with the submission of the complaint and to provide only general information in relation online dispute resolution procedures. This general information could include i.a. information on the cost for the procedure, the language or languages in which the procedure will be conducted, the average length of the ADR procedure and the binding or non-binding nature of the outcome of the procedure. The facilitators should not act as case handlers with regard to the dispute. This Regulation should not oblige ODR facilitators to translate documents related to the dispute.
- (18a) The provisions of ODR facilitators in this Regulation are without prejudice to confidentiality provisions in national legislation in relation to alternative dispute resolution.

- (19) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Online dispute resolution procedures cannot be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. Nothing in this Regulation should, therefore, prevent parties from exercising their right of access to the judicial system.
- (20) The processing of information under this Regulation should be subject to strict guarantees of confidentiality and should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²⁸ and in Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²⁹. These rules should apply to the processing of personal data carried out under this Regulation by the various actors of the platform, whether they act alone or jointly with other actors of the platform.
- (21) Data subjects should be informed about the processing of their personal data in the ODR platform, and their rights with regard to that processing, by means of a comprehensive privacy notice to be made publicly available by the Commission and explaining, in a clear and simple language, the processing operations performed under the responsibility of the various actors of the platform, in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001 and with national legislation adopted pursuant to Articles 10 and 11 of Directive 95/46/EC.

²⁸ OJ L 281, 23.11.1995, p. 31.

²⁹ OJ L 8, 12.1.2001, p. 1.

- (22) Traders engaging in online sales or service contracts should inform consumers about their e-mail address. When the trader is obliged or commits to use ADR entities to resolve cross border disputes with consumers, he should also inform the consumer on his websites about the existence of the ODR platform and provide an electronic link to its homepage. They should also provide such information when a consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or a company ombudsman. This obligation should be without prejudice to Article 10(1) to (3) of Directive .../.../EU [*Office of Publications insert reference number*] concerning the information of consumers by traders about the ADR entity or ADR entities by which those traders are covered, when the trader commits to use these entities to resolve disputes with consumers. Furthermore, this obligation should be without prejudice to Articles 6(1)(t) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights³⁰. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract.
- (23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the type of information which a complainant is to provide in the electronic complaint form made available on the ODR platform. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

³⁰ OJ L ..., ..., p.

- (24) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission in respect of the functioning of the ODR platform, the modalities for the submission of a complaint and co-operation within the ODR facilitators' network. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of implementing acts relating to the electronic complaint form given its purely technical nature. The examination procedure should be used for the adoption of the rules concerning the modalities of cooperation between the ODR facilitators of the network of online dispute resolution facilitators.
- (25) Since the objectives of this Regulation, namely to set up a European online dispute resolution platform for cross-border online disputes governed by common rules, because of the scale and effects of the action, cannot be sufficiently achieved by the Member States and therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (26) This regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject matter

The purpose of this Regulation is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, and in particular its digital dimension by providing a platform facilitating the impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders online.

Article 2

Scope

This Regulation shall apply to the out-of-court resolution of disputes concerning contractual obligations stemming from cross-border online sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union through the intervention of an alternative dispute resolution entity complying with Directive [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and involving the use of a European online dispute resolution platform.

Article 3
Relationship with other Union legislation

This Regulation is without prejudice to Directive 2008/52/EC, Regulation (EC) No 44/2001 and Regulation (EC) No 593/2008.

Article 4
Definitions

For the purposes of this Regulation:

- (a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
- (b) "trader" means any natural persons or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;
- (c) "online sales service contract" means a sales or service contract where the trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means.

If the offer or the order has been made orally in a telephone conversation or by telefax or telex, a sales or service contract shall not be considered as an "online sales or service contract";

- (ca) "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

- (cb) "service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- (d) "electronic means" means electronic equipment for the processing (including digital compression) and storage of data which is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.
- (e) "cross-border online sales or service contract" means an online sale service where, at the time the consumer orders the good or service, the consumer is resident in a Member State other than the Member State where the trader is established;
- (f) a trader is "established"
- if the trader is a natural person, where he has his place of business;
 - if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or principal place of business or, if the trader's offer is made or if the goods or services ordered are to be delivered out of the operations of a branch, agency or other establishment, where that branch, agency or other establishment is situated;
- (g) "alternative dispute resolution procedure" (hereinafter "ADR procedure") means a procedure for the out-of-court resolution of a dispute through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution as referred to in Article 4(da) of Directive.../...EU [*Office of Publications insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)*];
- (h) "alternative dispute resolution entity", (hereinafter "ADR entity") means an entity covered by Article 4(e) of Directive.../... EU [*Office of Publications insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)*];

- (ha) an ADR entity is "established":
- if the entity is operated by a natural person, at the place where it carries out alternative dispute resolution activities;
 - if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities;
 - if the entity is operated by an authority or other public body, where that authority or other public body has its seat;
- (i) [...];
- (j) [...];
- (k) "personal data" means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

CHAPTER II

European online dispute resolution platform

Article 5

Establishment of the European online dispute resolution platform

1. The Commission shall establish a European online dispute resolution platform, (hereinafter 'ODR platform').

2. The ODR platform shall be an interactive website which can be accessed electronically and free of charge in all official languages of the Union. The ODR platform shall be a single point of entry to consumers and traders seeking the out-of-court resolution of disputes covered by this Regulation.
3. The ODR platform shall have the following functions:
 - (a) providing an electronic complaint form which can be filled in by the consumer;
 - (aa) informing the trader about the complaint submitted against him;
 - (b) identifying, based on the information contained in the electronic complaint form, the ADR entity or the ADR entities which are competent to deal with the dispute and providing information to the parties on the costs for their procedures, if applicable, procedural rules, if any, concerning thresholds and time limits, the language or languages in which the procedure will be conducted, the average length of the procedure and the binding or non-binding nature of its outcome;
 - (c) if no competent ADR entity can be identified, informing the consumer that based on the information submitted, no competent ADR entity could be identified;
 - (ca) inviting the trader to state whether he is obliged or has committed to use a certain ADR entity for resolving disputes covered by the Directive/.../EU [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)];
 - (d) inviting the parties to agree on the competent ADR entity which they decide to use to settle their dispute or, if more than one ADR entity has been identified, on one of the competent ADR entities identified;
 - (e) transmitting complaints to the ADR entity which the parties have agreed to use in accordance with Article 8(4);
 - (f) offering, free of charge, an electronic case management tool which enables the parties and the ADR entity, if they choose so, to conduct the dispute resolution procedure online via the platform;

- (g) publishing information on ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] which deal with disputes covered by this Regulation. The information should be provided electronically and in a clear, comprehensible, easily accessible way and be kept up to date;
 - (h) providing general information on alternative dispute resolution as a means of out-of-court dispute settlement;
 - (i) making accessible statistics on the outcome of the disputes handled by the ADR entities to which complaints have been transmitted via the ODR platform.
4. ADR entities which have been notified to the Commission in accordance with Article 17(2) of Directive/.../EU [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and which, are competent to deal with disputes covered by this Regulation, shall register electronically with the ODR platform.
5. The Commission shall be responsible for the ODR platform as regards its development, its operation, including translation, its maintenance, its funding and as regards data security.
6. The Commission shall adopt measures concerning the modalities for the exercise of the functions provided for in paragraph 3 through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).

Article 6

Network of online dispute resolution facilitators

1. Each Member State shall designate one ODR contact point and communicate its name and contact details to the Commission. Member States may confer responsibility for the ODR contact points on their centres of the European Consumer Centre Network, on consumer associations or on any other body. Each ODR contact point shall host at least two online dispute resolution facilitators (hereinafter 'ODR facilitators').

2. The ODR facilitators shall provide support to the parties involved in disputes relating to complaints submitted via the platform by fulfilling the following functions:
 - (a) if requested, facilitating communication between the parties and the competent ADR entity. This may include, in particular:
 - (i) assisting with the submission of the complaint and, where appropriate, relevant documentation,
 - (ii) providing the parties and ADR entities with general information on consumer rights in relation to the sale of goods or provision of services which apply in the Member State of the ODR contact point which hosts the ODR facilitators concerned;
 - (b) if requested, informing consumers of other means of redress when a dispute cannot be resolved via the platform;
 - (c) submitting, based on the practical experience gained from the performance of their functions, every two years an activity report to the Commission and to the Member States;
 - (d) if requested, informing the parties of the rules of procedure applied by the proposed ADR entities.

3. The Commission shall establish a network of online dispute resolution facilitators (hereinafter the 'ODR facilitators' network') which shall enable cooperation between ODR facilitators and contribute to the performance of the functions set out in paragraph 2.
4. The Commission shall at least once every year convene a meeting of members of the ODR facilitators' network in order to permit an exchange of best practice, and a discussion of any recurring problems encountered in the operation of the ODR platform.
5. The Commission shall adopt the rules concerning the modalities of the cooperation between the ODR facilitators through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).

Article 7

Submission of a complaint

1. In order to submit a complaint to the ODR platform the consumer shall fill in the electronic complaint form which shall be available on the platform's website. The consumer may attach to the complaint form any documents in electronic form in support of his complaint.
2. The information to be submitted by the consumer shall be sufficient to determine the competent ADR entity. This information is described in the Annex.
3. The ODR platform shall provide the parties with information about the ADR entity or entities identified by the ODR platform as competent.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive .../.../EU [*Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)*] that deal with disputes covered by this Regulation define their respective scopes of application.

5. The Commission shall lay down the modalities of the electronic complaint form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 15(2).
6. Only data which are accurate, relevant and not excessive in relation to the purposes for which they are collected shall be processed through the electronic complaint form and its attachments.

Article 8

Processing and transmission of a complaint

1. A complaint submitted to the platform shall be processed if the complaint form is fully completed.
2. Upon receipt of a fully completed complaint form, the ODR platform shall transmit to the trader, in the language of the contract or website, the following:
 - (-a) the nature and the grounds of the complaint;
 - (a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it;
 - (-b) an invitation to the trader to state, within seven days from receiving the communication, whether he is obliged by national law or has committed to use a specific ADR entity and, if applicable, if he is willing to use another ADR entity stated in the list referred to in (c);

- (-bb) the information that in the event that the consumer chooses an ADR entity the trader is obliged, has committed or is willing to use, the platform shall automatically transmit the complaint to that ADR entity;
- (b) the information that in the event that the parties fail to agree on one competent ADR entity or that no competent ADR entity is identified, the complaint shall not be processed further;
- (c) a list of all competent ADR entities, if any are identified. The list shall include a description of the following characteristics of each entity:
 - (-i) the name and website address of the ADR entity;
 - (i) the costs for the procedure, if applicable;
 - (ii) the language or languages in which the procedure will be conducted;
 - (iii) the average length of the ADR procedure;
 - (iv) the binding or non-binding nature of the outcome of the procedure;
 - (v) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and (5) of Directive .../.../EU [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)];
- (d) the name and contact details of the ODR contact point in the place of residence for the consumer and in the place of establishment for the trader, as well as a brief description of the functions referred to in Article 6(2)(a), (b) and (d).

3. Upon receipt from the trader of the information referred to in paragraph 2(-b) the platform shall, in the language of the complaint, communicate to the consumer the following:
- (a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it;
 - (b) the information that in the event that the consumer chooses an ADR entity the trader is obliged, has committed or is willing to use, the platform shall automatically transmit the complaint to that ADR entity;
 - (c) the information that in the event that the parties fail to agree in one competent ADR entity or that no competent ADR entity is identified, the complaint shall not be processed further, including a description of the following characteristics of that entity or, if applicable , each of those entities;
 - (d) the ADR entity or, if applicable, the ADR entities which the trader has stated in accordance with paragraph 2(-b), including a description of the following characteristics of that entity or, if applicable, each of those entities:
 - (i) the name and website address of the ADR entity;
 - (ii) the costs for the procedure, if applicable;
 - (iii) the language or languages in which the procedure will be conducted;
 - (iv) the average length of the ADR procedure;
 - (v) the binding or non-binding nature of the outcome of the procedure;
 - (vi) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and (5) of Directive.../.../EU [*Office of Publications please insert number of* Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)];

- (e) an invitation to the consumer to select, within seven days from receiving the communication, the ADR entity or, if applicable, one of the ADR entities stated by the trader in accordance with paragraph 2(-b), specifying that there is no obligation on the consumer to make such a selection;
 - (f) the information, that if the consumer makes a selection the complaint will be automatically transmitted to the ADR entity selected by the parties;
 - (g) the name and contact details of the ODR contact point in the place of residence for the consumer and in the place of establishment for the trader, as well as a brief description of the functions referred to in Article 6(2)(a), (b) and (d).
4. Upon receipt from the consumer of the information referred to in paragraph 3(e) the platform shall automatically transmit the complaint to the ADR entity selected by the parties.
- 4a The ADR entity to which the complaint was transmitted shall without undue delay inform the ODR platform of its competence for dealing with the complaint on the basis of its procedural rules and of the nature of the complaint.
- 4ab The ODR platform shall transmit this information to the parties.
5. Where the parties fail to reply to the platform or to agree on one competent ADR entity within 30 days, the complaint shall not be processed further. The consumer shall be informed of the possibility of contacting an ODR facilitator for general information on other means of redress.

Article 9
Resolution of the dispute

1. ADR entities to which a complaint has been transmitted in accordance with Article 8 shall without undue delay transmit the date of the conclusion and the result of the procedure or the reasons why the procedure was not concluded to the ODR platform.
2. ADR procedures applied by ADR entities to which a complaint has been transmitted in accordance with Article 8 shall not require the physical presence of the parties or their representatives.

Article 10
Database

The Commission shall take the necessary measures to establish and maintain an electronic database in which it shall store the information processed in accordance with Article 5(3) and Article 9(1) taking due account of Article 12(2) of this Regulation.

Article 11
Processing of personal data

1. Access to necessary information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. Access to the same information shall be granted also to ODR facilitators supporting the parties only for the purposes referred to in Article 6(2).

2. The Commission shall have access to information processed in accordance with Article 9(1) for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 17. It shall process personal data of the users of the platform only in so far as it is necessary for the operation and maintenance of the platform, including for the purposes of monitoring the use of the platform by ADR entities and ODR facilitators.
3. Personal data related to a dispute shall be kept in the database referred to in paragraph 1 only for the time necessary to achieve the purposes for which they were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights, and shall be automatically deleted, at the latest, after 6 months following the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with Article 9(1). The above-mentioned retention period shall also apply to personal data kept in national files by the ADR entity or the ODR facilitator which dealt with the dispute concerned, except if the rules of procedure applied by the ADR entity or any specific provisions of national law provide for a longer retention period.
4. Each ODR facilitator and each ADR entity shall be regarded as a controller, in accordance with Article 2(d) of Directive 95/46/EC, with respect to their own data processing activities under this Regulation and shall be responsible to ensure that these activities comply with data protection rules laid down in national legislation in the Member State where the ADR entity is established adopted pursuant to Directive 95/46/EC. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller in accordance with Article 2(d) of Regulation (EC) No 45/2001.

Article 12

Data confidentiality and security

1. ODR facilitators shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State of their ODR contact point. ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State where they are established.
2. The Commission shall take the appropriate technical and organisational measures to ensure the security of information processed under this Regulation, including appropriate data access control, a security plan and a security incident management, in accordance with Article 22 of Regulation (EC) No 45/2001.

Article 13

Consumer information

1. Traders established within the Union engaging in the online sales or service contracts shall inform consumers about their e-mail address. When the trader is obliged or commits to use ADR entities to resolve cross-border disputes with consumers he shall also inform the consumer about the existence of the ODR platform. This information shall be mentioned in a clear, comprehensible and easily accessible way on the traders' website, if applicable, this information shall also be contained in the general terms and conditions of sales or service contracts, between the trader and a consumer. It shall include an electronic link to the ODR platform's homepage. Such traders shall also inform consumers about the ODR platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.

2. The provisions in paragraph 1 are without prejudice to the provisions in Article 10 of Directive/.../EU [*Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)*] concerning the information of consumers by traders about the ADR entity or ADR entities by which those traders are covered when the trader commits to use these entities to resolve disputes with consumers.

3. [...]

Article 14

Role of the competent authority

The compliance by ADR entities with the obligations set in this Regulation shall be assessed by the competent authorities which have been established by Member States in accordance with Article 15(1) of Directive/.../EU [*Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)*].

CHAPTER III

Final provisions

Article 15

Implementing acts

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 7(4) shall be conferred for an indeterminate period of time from the *[Office of Publications insert same date as in Art. 18(1) = date of entry into force of this Regulation]*.

3. The delegation of powers referred to in Article 7(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 7(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 16a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Article 13 of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 16b
Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

"21. Regulation of the European Parliament and of the Council of on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L...,, p. ...): Article 13."

Article 16c
Amendment to Directive 2009/22/EC

In the Annex to Directive 2009/22/EC the following point is added:

"15. Regulation of the European Parliament and of the Council of on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L...,, p. ...): Article 13."

Article 17
Reports

Every three years and for the first time no later than five years after the entry into force of this Regulation the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation. The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

Article 18

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from [*Office of Publications insert date = 6 months after implementation deadline for Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR as to be inserted in that Directive in accordance with Art 22(1) of that Directive*], except for Article 5(1), (4), (5) and (6), Article 6, Article 7(4) and (5), Article 10, Article 15 and Article 16 which shall apply from the date on which this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Information to be provided when filling in the electronic complaint form

- (1) Name, address and, if applicable, e-mail and website address of the consumer;
- (2) [...];
- (3) Name, address and, if applicable, e-mail and website address of the trader;
- (4) [...];
- (5) Type of goods or services to the sale or provision of which the complaint relates;
- (6) Grounds on which the complaint is based;
- (7) Consumer's place of residence at the time the goods or services were ordered;
- (8) Communication method by which the goods or services were offered and communication method by which the order was made;
- (9) If applicable, where the trader's offer was made or the goods or services delivered or supposed to be delivered out of the operations of a branch, agency or other establishment, the place where that branch, agency or other establishment is situated;
- (10) Language of the contract or language of the website;
- (11) ADR entities which according to the trader's statement on his website (or the trader's statement in his e-mail or other textual messages in electronic form through which he transmits his offer) the trader is obliged or has committed to use.
